

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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|---------------------------------------|---|-----------------------------|
| In the Matter of                      | ) |                             |
|                                       | ) |                             |
| North County Broadcasting Corporation | ) | File No.: EB-10-SD-0028     |
| Licensee of Station KFSD(AM)          | ) | NAL/Acct. No.: 201132940002 |
| Escondido, California                 | ) | FRN: 0003770757             |
|                                       | ) | Facility ID No.: 49205      |

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 7, 2014****Released: March 10, 2014**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (*MO&O*), issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),<sup>1</sup> we deny the petition for reconsideration (Petition)<sup>2</sup> filed by North County Broadcasting Corporation (NCBC), licensee of Station KFSD(AM) in Escondido, California, of the *Forfeiture Order* issued on February 15, 2013.<sup>3</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of four thousand, eight hundred dollars (\$4,800) for NCBC's willful and repeated violation of Section 11.35 of the Commission's rules (Rules)<sup>4</sup> for failure to ensure the operational readiness of Station KFSD(AM)'s Emergency Alert System (EAS) equipment.

**II. BACKGROUND**

2. The *Forfeiture Order* fully stated the facts of this proceeding so we will not repeat them here.<sup>5</sup> In the *Forfeiture Order*, the Enforcement Bureau's Western Region (Region) found no merit in NCBC's argument that the *NAL* cannot be enforced because NCBC is a "small entity" and the Commission has never complied with its obligation under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>6</sup> "to adopt a specific policy or program concerning the reduction or waiver of forfeiture for small entities."<sup>7</sup> The Region determined that the Commission had previously held

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<sup>1</sup> See 47 U.S.C. § 405.

<sup>2</sup> See *North County Broadcasting Corporation*, Petition for Reconsideration (filed Feb. 27, 2013) (on file in EB-10-SD-0028) (Petition).

<sup>3</sup> *North County Broadcasting Corporation*, Forfeiture Order, 28 FCC Rcd 1207 (Enf. Bur. 2013) (*Forfeiture Order*), *aff'g* Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 201 (Enf. Bur 2011) (*NAL*). NCBC filed a response to the *NAL* on February 4, 2011. Response of North County Broadcasting (Feb. 4, 2011) (on file in EB-10-SD-0028) (*NAL Response*).

<sup>4</sup> 47 C.F.R. § 11.35.

<sup>5</sup> *Forfeiture Order*, 28 FCC Rcd at 1207–08, paras. 2–5.

<sup>6</sup> Pub. L. No. 104-121, 110 Stat. 847 (Mar. 29, 1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (May 25, 2007).

<sup>7</sup> *Forfeiture Order*, 28 FCC Rcd at 1210, para. 10 (quoting *NAL Response* at 2–3).

that its policies, as detailed in the *Forfeiture Policy Statement*,<sup>8</sup> comply with the SBREFA.<sup>9</sup> In particular, the Commission found that, consistent with the SBREFA, its precedent requires consideration of a small entity's ability to pay along with any good faith efforts by the entity to comply with the law.<sup>10</sup> The Commission also confirmed that its "other upward and downward adjustment factors, which are reflective of existing policy, encompass many of the conditions and exclusions listed and . . . SBREFA."<sup>11</sup> The Region noted that NCBC proffered no evidence of its inability to pay the proposed forfeiture<sup>12</sup> and that the Region's San Diego Office already reduced the proposed forfeiture amount after taking into account NCBC's good faith effort to troubleshoot the EAS equipment failure prior to inspection.<sup>13</sup> The Region also noted NCBC's history of compliance with the Rules and reduced the forfeiture from \$6,000 to \$4,800.<sup>14</sup>

### III. DISCUSSION

3. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>15</sup> A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied.<sup>16</sup> We find that NCBC's Petition fails to demonstrate a material error or omission in the *Forfeiture Order* and reiterates arguments previously presented to and rejected by the Region.<sup>17</sup> We further find that NCBC raises no new facts and presents no new or previously unknown facts in its Petition, but merely reiterates its argument that the Commission "has failed to comply with its obligation under SBREFA to establish a policy or program to provide for the reduction . . . of civil penalties for rule violations by small entities."<sup>18</sup> As discussed in the *Forfeiture Order*, the Commission dealt with this argument when it amended Section 1.80 of the Rules and released the

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<sup>8</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), recons. denied, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>9</sup> *Forfeiture Order*, 28 FCC Rcd at 1210, para. 10 (citing *Forfeiture Policy Statement*, 12 FCC Rcd at 17109, para. 52).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* See, e.g., *Pac. Empire Radio Corp.*, *Forfeiture Order*, DA 14-155, 2014 WL 495201, at 3, para. 6 (Enf. Bur. Feb. 7, 2014) (assessment of \$25,000 forfeiture against a small radio licensee for failing to maintain a complete public inspection file that took into account the broadcaster's history of compliance and ability to pay is consistent with the SBREFA).

<sup>12</sup> The Region noted that NCBC stated in the *NAL Response* that "NCBC's tax returns which were sent directly to the Field Office on May 17, 2010, along with a letter asking that the forfeiture proposed in the NAL be canceled based on NCBC's inability to pay [sic] establish that NCBC is a small entity." *Forfeiture Order*, 28 FCC Rcd at 1210, n.26 (quoting *NAL Response* at 2 n.1). The Region stated that it was "unable to consider this claim because our records indicate that no such letter or tax returns were ever received by the San Diego Office . . ." *Forfeiture Order*, 28 FCC Rcd at 1210, n.26.

<sup>13</sup> *Id.* at 1210, para. 11.

<sup>14</sup> *Id.* at 1210, para. 12.

<sup>15</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

<sup>16</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, para. 2.

<sup>17</sup> *Forfeiture Order*, 28 FCC Rcd at 1208–10, paras. 6–13.

<sup>18</sup> Petition at 1.

*Forfeiture Policy Statement*.<sup>19</sup> We also note that NCBC has produced no new evidence regarding its inability to pay the forfeiture.<sup>20</sup> Therefore, we find that the Petition provides no basis for reconsideration of, further reduction to, or cancellation of the monetary forfeiture assessed against NCBC and affirm the *Forfeiture Order*.

#### IV. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act,<sup>21</sup> and Section 1.106 of the Rules,<sup>22</sup> the Petition for Reconsideration filed by North County Broadcasting Corporation **IS DENIED** and the *Forfeiture Order*, 28 FCC Rcd 1207, issued February 15, 2013, **IS AFFIRMED**.

5. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311 and 1.80 of the Rules, North County Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand, eight hundred dollars (\$4,800) for willfully and repeatedly violating Section 11.35 of the Rules.<sup>23</sup>

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules immediately and no later than thirty (30) calendar days after the release date of this Memorandum Opinion and Order.<sup>24</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>25</sup> North County Broadcasting Corporation shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made.

7. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of

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<sup>19</sup> *Forfeiture Order*, 28 FCC Rcd at 1210, para. 10; *see Forfeiture Policy Statement*, 12 FCC Rcd at 17109, para. 52 (“Our existing policies, as reflected in our precedent, and as retained here, comply with Section 223 of SBREFA. Warnings, rather than forfeitures, may continue to be appropriate in particular cases involving small businesses or others. . . . Under Section 503(b)(2)(D) of the Communications Act and section 1.80(b)(4) of our rules, we will continue to consider inability to pay a relevant factor in assessing forfeitures. . . . Our other upward and downward adjustment factors, which are reflective of existing policy, encompass many of the conditions and exclusions listed and Section 223 of SBREFA. . . . These factors will continue to be applied in cases of violations involving small entities (as well as others) to determine whether a waiver or reduction of a forfeiture is warranted.”). *See also U.S. v. Neely*, 595 F. Supp. 2d 662 (D.S.C. 2009) (SBREFA does not require reduction of a forfeiture assessed by the FCC where the *Forfeiture Policy Statement* established procedures and guidelines through which the FCC could consider whether small entities had the ability to pay a particular forfeiture amount or the ability to submit the same kind of documentation as larger entities to corroborate their inability to pay, and expressly acknowledged the requirements imposed by the SBREFA, and explained how its existing policies complied with them).

<sup>20</sup> *See Forfeiture Order*, 28 FCC Rcd at 1210, n.26. *See also Callais Cablevision*, *Forfeiture Order*, 17 FCC Rcd 22626 (2002) (Commission acknowledged that the SBREFA requires federal agencies to establish policies providing for the reduction of forfeitures imposed on small businesses, and stated that under appropriate circumstances, the Commission would consider ability to pay in determining penalty assessments on small entities, but the entities must present information indicating that they are unable to pay the proposed forfeitures).

<sup>21</sup> 47 U.S.C. § 405.

<sup>22</sup> 47 C.F.R. § 1.106.

<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 1.80, 11.35.

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> 47 U.S.C. § 504(a).

payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>26</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>27</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

9. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to North County Broadcasting Corporation at 1563 South State College Boulevard, Anaheim, CA 92806, and to David Tillotson, Esquire, its counsel of record, at 4606 Charleston Terrace, NW, Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>26</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>27</sup> See 47 C.F.R. § 1.1914.